In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1913

KARL J. BRAY AND JAMES H. L. LAWLER, PETITIONERS

v.

T. W. ELISON, ET AL., AND
UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

The sole question raised in the petition is whether petitioners' suit for injunctive relief against the Internal Revenue Service was properly dismissed for lack of jurisdiction.

Petitioner Bray filed federal income tax returns for the years 1971 and 1972 containing no information, and petitioner Lawler failed to file any return for the year 1971. As a result, the Internal Revenue Service instituted an investigation of their tax liabilities and, pursuant to its authority under Section 7602 of the Internal Revenue Code of 1954, issued summonses to certain banks to obtain records pertaining to their accounts (II-R. 103-104).[1] Thereafter, petitioners filed a complaint in the United States District Court for the District of Utah

[1] "II-R." references are to Volume II of the record on appeal.

alleging that the purpose of the investigation being conducted by the Internal Revenue Service was to harass petitioners and to interfere with the exercise of their rights under the Constitution (II-R. 1-6). At the same time petitioners moved for a restraining order to enjoin the Internal Revenue Service from continuing its investigation (II-R. 7). The district court dismissed the complaint for lack of jurisdiction and the court of appeals affirmed (Pet. App. 1a-5a).

This suit to enjoin the Internal Revenue Service from investigating petitioners' tax liabilities is clearly barred by Section 7421(a) of the Code, known as the Anti-Injunction Act. This statute prohibits suits to restrain assessment or collection of taxes as well as attempts to enjoin administrative actions preliminary to assessment and collection of taxes. Only last Term, the Court upheld the bar of the Anti-Injunction Act in the context of attempts to obtain equitable relief in connection with tax-exempt status. See *Bob Jones University* v. *Simon*, No. 72-1470; *Commissioner* v. *"Americans United", Inc.*, No. 72-1371, both decided May 15, 1974.[2]

It is respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

SEPTEMBER 1974.

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[2] Nothing in 28 U.S.C. 1346(a)(2), relied on by petitioners (Pet. 8, 14), provides a jurisdictional basis for their suit. As the court of appeals pointed out (Pet. App. 3a-4a), it has long been recognized that 28 U.S.C. 1346(a)(2) is available only to those seeking monetary judgment and not where declaratory, injunctive or other equitable relief is sought. *United States* v. *Jones*, 131 U.S. 1; *National Helium Corp.* v. *Morton*, 486 F. 2d 995 (C.A. 10).